TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE

FISCAL NOTE

HB 2055 - SB 2813

February 21, 2022

SUMMARY OF BILL: Transfers the Consumer Advocate Division (CAD) in the office of the Attorney General and Reporter (AG), along with all case files, records, and positions of employment dedicated to the CAD, to the Tennessee Public Utility Commission (TPUC) and renames it the Office of the Public Advocate (OPA). Substitutes the OPA as a party to a proceeding before the TPUC in which the CAD is party.

Provides a funding mechanism for OPA by which a fee is imposed on public utilities doing business in the state who are subject to TPUC regulation. TPUC will collect and deposit the fee into the State Treasury within TPUC's public utilities account. Provides penalties for a public utility that is in default in paying the fee and requires that every penalty collected must be deposited into the State Treasury. Authorizes TPUC to employ and compensate a licensed attorney from the public utilities account to bring an action in court of competent jurisdiction to recover the penalty; however, the attorney must not be compensated more than the amount of the penalty imposed.

Authorizes TPUC to utilize its deferred revenue account to fund the nonrecurring costs related to the transfer of the duties and authority of CAD and an annual operating budget shortfall of OPA.

Requires the OPA director to prepare and submit an annual budget for inclusion in TPUC's budget request and file an operations report with the General Assembly and TPUC on the first Monday of February each year.

Adds OPA to the *Tennessee Governmental Entity Review Law* with an initial termination date of June 30, 2024.

FISCAL IMPACT:

Increase State Revenue –
$1,200,000/FY22-23 and Subsequent Years/
Tennessee Public Utility Commission

Increase State Expenditures –
$984,200/FY22-23/Tennessee Public Utility Commission
$928,200/FY23-24 and Subsequent Years/
Tennessee Public Utility Commission

Decrease State Expenditures –
$904,800/FY22-23 and Subsequent Years/Attorney General

Other Fiscal Impact – The Tennessee Public Utility Commission is a self-funded entity. To the extent fees cannot be increased to cover the required expenditures, it is assumed funding from the General Fund will be necessary; however, the extent of such funding cannot be determined.

Assumptions:

- According to the AG, the CAD's expenditures were $923,500 in FY18-19, $868,400 in FY19-20, and $922,400 in FY20-21. The CAD is funded through the General Fund.
- There are currently nine positions within the CAD:
    - Deputy Attorney General (1) (oversees Financial Division)
    - Team Leader/Senior Assistant Attorney General (l)
    - Senior Assistant Attorney General (1)
    - Assistant Attorney General (1)
    - Financial Analyst (2) (The positions are currently vacant so the CAD utilizes the services of two outside expert consultants.)
    - Paralegal (Accounting and Tariff Specialist) (1)
    - Paralegal (1)
    - Legal Administrative Specialist (1)
    - Expenditures for the CAD do not include the positions of Deputy Attorney General, a paralegal, and the legal administrative specialist. Those positions are not funded through the CAD's appropriation because the individuals in those positions spend time working on non-CAD matters.
- The proposed legislation will result in a recurring decrease in state expenditures of $904,767 [($923,500 + $868,400 + $922,400) / 3] for the AG in FY22-23 and subsequent years.
- Public Chapter 349 of the 112th Tennessee General Assembly required TPUC to submit a written report to certain members of the General Assembly detailing a plan for the transference of CAD to TPUC.
- Per TPUC's report, on page 18, transferring the positions does not necessarily require the current personnel to be transferred.
- TPUC is a self-funded entity which does not receive funding from the General Fund, but through inspection fees assessed to public utilities under its regulation.
- It is reasonably assumed that TPUC will require additional staff and resources comparable to current CAD staff and resource levels.
- TPUC will have to increase fees assessed to public utilities to fund the new positions. Until such revenue is amassed, funds from the General Fund will be needed to fund such positions.
- TPUC will require eight additional positions (1 Director, 2 Attorneys, 3 Financial Analysts, 1 Paralegal, and 1 Assistant) beginning in FY22-23.
- There will be a recurring increase in state expenditures of $928,215 {[($117,756 salary + $26,485 benefits + $2,000 travel and training) Director] + [($110,004 salary + $25,198 benefits + $2,000 travel and training) x 2 Attorneys] + [($103,020 salary + $24,038

benefits + $2,000 travel and training) x 3 Financial Analysts] + [($45,684 salary + $14,514 benefits) Paralegal] + [($45,684 salary + $14,514 benefits) Assistant]} in FY22-23 and subsequent years.

- There will be a one-time increase in state expenditures in FY22-23 of $24,000 for equipment and supplies.
- Based on information provided by the Department of General Services, eight positions could be accommodated within TPUC's existing space at a cost of $4,000 per workstation. This will result in a one-time state expenditure of $32,000 ($4,000 x 8 workstations).
- The proposed legislation creates a funding mechanism for OPA through a fee imposed on water, wastewater, electric, and natural gas utilities doing business in the state who are subject to the control and supervision of TPUC. The fee imposed is determined by the amount of the gross receipts from intrastate operations of each water, wastewater, electric, and natural gas public utility having in excess of $1,000,000 in annual gross receipts from intrastate operations.
- The fee of $2.00 per $1,000 of such gross receipts is due October 1, 2022 and on or before April 1, 2023, and each April 1 thereafter and is based on the previous calendar year's gross receipts from intrastate operations.
- Based on information provided by TPUC, in calendar year 2020, there were six utilities with an excess of $1,000,000 in annual gross receipts. It is expected that applying the $2.00 per $1,000 fee will generate $1,200,000 in state revenue in FY22-23 and subsequent years.
- The proposed legislation creates a penalty for public utilities that do not pay the fee. This will result in an increase to state revenue, but due to unknown factors such as the number of public utilities that will elect not to pay the fee, the amount of such fee, and the amount of such penalty to be paid, a precise increase to state revenue to TPUC cannot reasonably be determined.
- The proposed legislation authorizes TPUC to employ and compensate a licensed attorney to bring an action in a court of competent jurisdiction to recover a penalty; compensation may come from the public utilities account within the State Treasury but may not exceed the amount of the penalty imposed. This will not result in an increase of expenditures which exceeds the increase in revenue from such contracting.
- A total increase in state expenditures to TPUC of $984,215 ($928,215 + $24,000 + $32,000) in FY22-23.
- A recurring increase in state expenditures to TPUC of $928,215 in FY23-24 and subsequent years.

IMPACT TO COMMERCE:

Other Commerce Impact – The extent and timing of any increase to business expenditures cannot reasonably be determined.

Assumptions:

- The proposed legislation funds the OPA through a fee imposed on water, wastewater, electric, and natural gas utilities doing business in the state who are subject to the control and supervision of TPUC.
- The fee of $2.00 per $1,000 of gross receipts is determined by the amount of gross receipts from intrastate operations of each water, wastewater, electric, and natural gas public utility having in excess of $1,000,000 in annual gross receipts from intrastate operations. The fee is due beginning October 1, 2022 and on or before April 1, 2023, and each April 1 thereafter.
- The fee may be recovered by a public utility through a rate case proceeding, a separate recover mechanism to be determined by the commission, or by including a line item on its customer bills.
- It is assumed that public utilities will include a line item on customer bills to offset the costs of the fee, and therefore, the cost of the OPA function would be paid by consumers of the public utilities' services. Any impact to commerce or jobs in Tennessee would be not significant.
- The proposed legislation provides penalties for public utilities that do not pay the fee. The extent and timing of any increase to business expenditures due to the payment of penalties cannot reasonably be determined due unknown factors such as the number of public utilities that will elect not to pay the fee, the amount of such fee, and the amount of such penalty to be paid.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

Krista Lee Carsner

Krista Lee Carsner, Executive Director

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